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In the Supreme Court of the United States

OCTOBER TERM, 1937

UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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CITATIONS

47879—38——1

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The Acting Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Fourth Circuit, entered in the above-entitled cause on January 4, 1938, affirming the order of the District Court of the United States for the Western District of South Carolina, which granted the petition of the claimant, Commercial Credit Company, for a remission of the forfeiture of an automobile seized and forfeited under the internal revenue laws.

OPINIONS BELOW

Neither the opinion of the District Court (R. 5–13) nor that of the Circuit Court of Appeals (R. 26–28) has been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 4, 1938. (R. 29.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the claimant sufficiently complied with the provisions of Section 204 (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878, to entitle it to a remission of the forfeiture of an automobile seized and forfeited under the internal revenue laws.

STATUTE INVOLVED

Sections 204 (a) and (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C., Sup. II, Title 27, Sec. 40a), will be found in the Appendix, *infra* pp. 18–19.

STATEMENT

The automobile here involved was seized on December 3, 1936, by Federal officers from one Benjamin Guy Walker while it was being used by him in the unlawful transportation of distilled spirits

upon which the tax had not been paid. He pleaded guilty to an indictment for such violation of the Internal Revenue Laws in the United States District Court for the Western District of South Carolina and was sentenced (R. 5).

A libel was filed in the above District Court for the forfeiture of the automobile under Section 3450, Revised Statutes (U. S. C., Title 26, Sec. 1441). The Commercial Credit Company, assignee of a conditional sales contract, intervened and made return to the libel, admitted the material allegations thereof and prayed for a remission of the forfeiture under Section 204 (a) of the Liquor Law Repeal and Enforcement Act (R. 3–5). Trial was to the court (R. 5) and in its opinion (R. 5–7) it found the facts substantially as follows:

The automobile was sold by the Greenville Auto Sales, Inc., on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price turned in an old car. He was given terms for the payment of the purchase price under a conditional sales contract which was made out in the name of and signed by his brother, Landrum P. Walker. Benjamin Walker and his wife had domestic difficulties at the time and the contract was drawn and executed in the name of his brother in order to place the title of the automobile "where his wife could not reach it." Landrum Walker had no interest in the transaction except to comply with the request of his brother. Benjamin Walker selected the car, made the agreement

and handled the transaction himself. Landrum Walker drove the car away from the dealer's place of business. Benjamin Walker at the time, and for two or three weeks thereafter, was living at the home of his brother. Only one payment was made on the contract before the seizure and that was made by Benjamin Walker to the dealer.

It was admitted by all the parties that Benjamin Walker had a previous record and reputation for violating both state and Federal liquor laws. His brother, Landrum Walker, was convicted of violating the National Prohibition Act in 1929, but since then his record and reputation had been good.

On the date the sale was consummated the dealer submitted the contract to the claimant Commercial Credit Company which accepted by telephone, and subsequently on October 5, in the usual course of business, the dealer assigned the contract to the claimant and received a check for the same. Before accepting the assignment of the contract the claimant made an investigation of Landrum Walker by inquiring at the headquarters of the sheriff of Greenville County, South Carolina, and at the headquarters of the chief of police of the City of Greenville, the county and city where the interest was acquired and Landrum Walker resided, as to his record and reputation for violating the liquor laws. The information received was that Landrum Walker had no such record or reputation, but that Benjamin Walker had both a record and reputation for violating state and Federal laws

relating to liquor. No inquiry or investigation whatsoever was made as to Benjamin Walker, the admitted real owner and purchaser of the automobile.

The court ordered the car forfeited, but it held that the claimant had sufficiently complied with the three statutory conditions contained in Section 204 (b) of the Liquor Law Repeal and Enforcement Act to entitle it to a remission of the forfeiture. (R. 7–14.) Upon appeal by the United States to the Circuit Court of Appeals for the Fourth Circuit the judgment of the District Court was affirmed. (R. 29.) The appellate court held that subsections (b) (1) and (2) of the statute had been complied with because the claimant had acquired its interest in the vehicle in good faith and had neither knowledge nor reason to believe that the vehicle would be illegally used, since there was nothing before the claimant to show that Landrum Walker was not the real purchaser. As to subsection (b) (3) it held that this provision of the statute had been complied with when the claimant investigated Landrum Walker, the fictitious or straw purchaser, because the statute did not require a lienor to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the designated law enforcement officers as to every such person's previous record or reputation, unless from the documents themselves or other surrounding circumstances the lienor possessed information which would lead a reasonably

prudent and law-abiding person to make a further investigation. (R. 26–28.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the claimant had no reason to believe that the automobile would be illegally used, as that language is employed in subsection (b) (2) of the statute.

(2) In holding that subsection (b) (3) had been sufficiently complied with by the claimant's investigation of the fictitious or straw purchaser.

(3) In holding that the claimant was not required under subsection (b) (3) to investigate the real purchaser.

(4) In failing to hold that it was incumbent upon the claimant to make a reasonable effort to ascertain the identity of the real purchaser so that his previous record and reputation could be investigated in accordance with subsection (b) (3).

(5) In not reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

(1) The court's construction of the statute is, we submit, erroneous in several particulars.

(a) Section 204 (a) gives the District Court jurisdiction to remit or mitigate the forfeiture of an automobile where a forfeiture is decreed under the internal revenue laws. Section 204 (b) specifically provides, however, that such remission shall

not be allowed unless the three conditions therein set forth are complied with. The first two of these conditions are that the claimant must prove (1) that he has an interest in the vehicle which he acquired in good faith, and (2) that he had at no time any knowledge or reason to believe that it would be used in violating Federal or state liquor laws. It is conceded that condition (1) was complied with because the claimant had an interest in the vehicle and because it acquired such interest in good faith, in that it was not a party to the transaction between the dealer and the bootlegger. It may also be admitted with respect to condition (2) that the claimant had no "knowledge" that the vehicle would be illegally used.

The court, however, went further and held that condition (2) was fully complied with because the claimant also had no "reason to believe" that the car would be so used, since there was nothing before the claimant to show that Landrum Walker, the fictitious purchaser, was not the real purchaser of the car. In so holding, we think the court gave too narrow a construction to the statute. The claimant could not close its eyes to an obvious risk and then claim that it had no reason to believe that there was such a risk. Persons dealing in automobiles and in automobile finance paper do so with full knowledge that automobiles are frequently used in violating the law. They are chargeable with knowledge that the courts have uniformly held that auto-

mobiles are especially adapted to violating the liquor laws,[1] and that the greatest risk of persons having an interest in automobile finance paper is the danger of seizure of the automobile for violations of such laws. Claimant must have known from experience that the very device by which it was deceived in this case is frequently employed by bootleggers in purchasing automobiles. Yet in the light of this knowledge and this experience it was satisfied to rely on the information in the documents before it and on the limited investigation made of the fictitious purchaser. It made no effort to ascertain what the true facts surrounding the transaction were. It could readily have inquired of Landrum Walker, whose paper it had before it, whether some one else was interested in the transaction, and of the dealer, from whom it acquired the conditional sales contract, whether the person signing the contract was the real purchaser and user of the car. If either or both of these inquiries had been made the claimant would doubtless have discovered that the automobile in which it was about to buy a substantial interest was not being acquired and used by Landrum Walker, the supposed owner, but by Benjamin Walker, the true owner and a violator of both Federal and state liquor laws.

We submit that a claimant may not be heard to say that it had no reason to believe a thing, within

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[1] Cf. *Goldsmith-Grant* v. *United States*, 254 U. S. 505, 513.

the meaning of the statute, when it has neglected to use ordinary diligence to discover the facts bearing on a situation or transaction, and that the holding of the court below that this part of the statute had been sufficiently complied with was erroneous.

(b) The court also erred in its construction of subsection (b) (3) of the statute.

This subsection provides that if it appears that the claimant's interest arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating Federal or state liquor laws has a right to the vehicle, then the claimant is required to show, in order to be entitled to a remission of the forfeiture, that before it acquired such interest it made certain investigations of the law enforcement agencies designated in the statute and was informed that such person had no such record or reputation. The court held that the claimant was not required to investigate the real purchaser and user of the car, because there was nothing before the claimant to show that Landrum Walker, the fictitious or straw purchaser, was not the real owner of the car. The statute specifically provides, however, that the person having a "right to the vehicle" shall be investigated. Here the claimant's interest not only arose out of, but was subject to, a contract or agreement with a bootlegger. He was the only purchaser under the contract and the only person having a right to the vehicle. The nominal purchaser had no right to the vehicle or interest in the transaction

whatsoever. To hold, as did the court below, that the claimant was required to investigate only the fictitious purchaser would lead to easy evasion of the statute and the internal revenue laws. An investigation of the fictitious purchaser seldom, if ever, discloses anything against him. This was true in the instant case. The very purpose of such transactions is to avoid an investigation of the real parties in interest. Bootleggers and dealers are cautious to use the names of fictitious persons or straw men with good reputations who will bear investigating, in order to avoid the difficulty of securing the financing of cars purchased on the installment plan.

We submit that under the language of the statute the claimant is required to investigate the real purchaser at his peril and that if he fails to do so, as between it and the Government the claimant assumes the risk of fraud perpetrated upon it by the dealer and the bootlegger.

(c) The court erred in failing to hold that the claimant was in any event required to make a reasonable effort to ascertain the identity of the real purchaser so that he could be investigated as required by subsection (b) (3).

If it be thought that the construction above contended for, that the claimant is required to investigate the real purchaser at its peril, places too strict a construction upon the statute and too great a burden upon the claimant when it has no knowledge or reason to suspect that the person whose

name appears in the documents before it is not the real purchaser, then, we submit, it should at least be required to make a reasonable effort to ascertain whether anyone else is interested in the transaction. The remission statute was not intended to enlarge the opportunities to defraud the revenue. We submit that before a claimant is entitled to the benefits of the statute, it should be required to take reasonable precautions to prevent such frauds. This could readily have been done in the instant case by the claimant inquiring of the fictitious purchaser and the dealer, both of whom were known to it, whether Landrum Walker was the real purchaser of the car. This was a reasonable requirement, and if followed the claimant would doubtless have been informed that the real purchaser was a bootlegger and it would have refrained from financing a car which was likely to be used in violating the law. But whether this be so or not, the claimant made no inquiry of the above persons or anyone else as to the true facts. The court below held that a claimant is not required to investigate everyone, bearing a bad reputation, who may have an interest in the contract of sale, unless from the documents themselves before it or other surrounding circumstances the claimant is put on notice.

We submit that, as held by the Circuit Court of Appeals for the Eighth Circuit in *Federal Motor Finance* v. *United States*, 88 F. (2d) 90, 93, a claimant cannot rely entirely on a course

of business whereby an interest in a car is acquired without taking care to ascertain who the real owner is. The court below in the instant case admitted that the language of the statute is open to the interpretation here contended for, but it declined to follow such construction. It said (R. 28):

> The involved language of sub-section (b) (3) of the act does permit the possible interpretation that the lienor is charged with the duty of making inquiry as to every one, bearing a bad reputation or record, who may have a right under the contract of sale, whether or not it appears on the face of the instrument. See *Federal Motor Finance* v. *United States*, 88 F. (2d) 90. But in our view Congress did not intend to impose upon the lienor the obligation to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law abiding person to make a further investigation.

(2) The decision in the instant case is in direct conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in *Federal Motor Finance* v. *United States*, 88 F. (2d) 90, *supra*, as is indicated by the citation of that case in the passage just quoted from the opinion below.

In the *Federal Motor Finance* case, *supra,* the facts were strikingly similar to those in the instant case. A car was sold by an agent of a dealer to one Tayson, a bootlegger. The note and conditional sales contract were executed in the name of one Canfield, who bore a good reputation, and were assumed by the finance company without knowledge of the fraud. The company investigated Canfield, but it did not investigate Tayson because it had no information that he was the purchaser. It made no inquiry as to whether any person other than Canfield was interested in the transaction. The District Court for the Southern District of Iowa denied remission of the forfeiture (13 F. Supp. 619). On appeal the appellant finance company contended that the trial court erred in holding that Tayson was the real purchaser of the car and in concluding that the claimant's interest arose out of or was subject to a contract or agreement with him. It claimed that the law violator Tayson acquired no rights to the car under the contract, and that the statute does not require a claimant to make inquiry of enforcement officers concerning the reputation of a person unless the claimant knows or should have known that such person had some right to or interest in the car. In affirming the order of the District Court the Circuit Court of Appeals (p. 93) quoted the following language from the opinion of

Judge Peters in *United States* v. *One 1935 Chevrolet Coupe*, 13 F. Supp. 986, 988 (Me.):

> "When it develops, after a seizure and forfeiture such as this, that the sale was actually made to the lawbreaker who caused the forfeiture, and not to the person whose name appears in the contract, the court will disregard the fiction and decide the case on the basis of the true facts."

The court then continued (88 F. (2d) at 93–94):

> The true facts in this case are that the confiscated car was sold and delivered by the agent of Harter Motors, Inc., to the liquor law violator Tayson and the defrauding of the revenue laws followed. The liquor law violator, and not the straw man Canfield, acquired the car. The lien of the appellant is good because Tayson is estopped to deny its validity and not because Canfield ever had any claim upon the car in fact or in law.
>
> On study of the wording of subdivision (b) (3) of 27 U. S. C. A. § 40a, we do not agree with the contention of the appellant that the intent of Congress was to relieve the finance company from all inquiry as to the true ownership of the car at the time it acquired its lien thereon, or to save such an interest as the finance company acquired from confiscation under the facts shown. We think the fair intendment of the language of subsection (3) concerning remission of forfeiture is that the appellant could not rely entirely upon a course of business whereby it acquired an interest in the car so

nearly approximating the total value thereof without taking care to ascertain who the real owner was in possession of and using the car. We agree with the statement by Judge Peters:

> "I see no evidence of any intention on the part of Congress to enlarge the number of opportunities for defrauding the revenue. Quite the contrary. To mitigate the result of this forfeiture would be to inform dealers that by using straw men on contracts dealers can safely sell cars to bootleggers and avoid subsequent forfeiture by turning over the contracts to innocent third parties. That is an avenue for fraud that should not be opened. The finance companies can easily take precautions against fictitious sales, and the few dealers who would be inclined to such practices will be checked."

The conflict between the *Federal Motor Finance* case, *supra,* and the instant case is not rendered any the less definite by reason of the statement in the opinion below that the District Court in its discretion might have denied remission of forfeiture even under the construction of the statute adopted by the court below (R. 28). The decisions in the *Federal Motor Finance* case, as the opinions therein clearly disclose, were based on the ground that no power to remit existed under the statute in the similar circumstances there presented; and that therefore there was no room for the exercise of discretion on the part of the District Court. The District Court in that case did not purport to

exercise discretion in denying remission. It concluded (13 F. Supp. 620):

> (5) That the court cannot allow the claim of the intervener, as it has failed to show the conditions precedent to remission or mitigation of a decree of forfeiture under the provisions of the Act of August 27, 1935, § 204, being section 40a, tit. 27, U. S. Code (27 U. S. C. A. § 40a).

The affirmance by the Circuit Court of Appeals in that case was similarly, and necessarily, predicated on the view that the District Court was without power to exercise discretion in determining whether the claimant there was entitled to remission of forfeiture.

(3) The court below has erroneously decided an important question of Federal law which has not been, but should be, settled by this Court. The question here involved is now pending before a number of the lower courts and an authoritative decision by this Court is necessary for their guidance. A proper construction of the statute is of importance to the Government in preventing frauds upon the revenue. If the decision remitting the forfeiture in the instant case is permitted to stand it will furnish proposed violators of the law with a simple formula for easily obtaining one of the instrumentalities of their trade and greatly add to the difficulties of enforcing the internal revenue laws.

CONCLUSION

The decision of the court below should not be permitted to stand without review by this Court. It is in direct conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit, and erroneously determines an important question of Federal law which has not been, but should be, settled by this Court. It is respectfully submitted that the petition for writ of certiorari should be granted.

GOLDEN W. BELL,
Acting Solicitor General.

FEBRUARY 1938.

APPENDIX

Sections 204 (a) and (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C. Sup. II, Title 27, Sec. 40a), provides:

> (a) *Jurisdiction of court.* Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.
>
> (b) *Conditions precedent to remission or mitigation.* In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or

agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

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